

Constitution of India and Environmental Governance:

Administrative and Adjudicatory

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Lecture 24

Kyoto Protocol: Developments between 1992-2012

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5.B. KYOTO PROTOCOL

INTERNATIONAL DEVELOPMENTS BETWEEN
1992-2012

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In this section, we would examine the trajectories of development that have occurred in the climate change negotiations at the global level. In the Framework Convention as discussed in the previous section, responsibilities of reductions in the GHGs or the greenhouse gases are fixed on annex one countries. But the details as to how it has to be accomplished, and how much of responsibility each of these industrialized countries have are not clearly, and in great detail worked out. So, how to implement, what are the modalities of working it out, and who would shoulder how much of responsibility, were not very clear. And the Framework Convention made it apt, apt and clear that it is a conference of parties through a series of meetings and deliberations, would be able to work out the modalities of the same.

1992 this was the position. Between 1992 and 1997, a lot of activities took place, it almost looks like a kind of a drama being enacted at the international level that when once somebody is accused of a wrong, and to take certain responsibilities, the one who is under an obligation coming up with several excuses or simply asking as to how I shall actually perform whatever

there has been imposed upon me, in a very sophisticated way this has been worked out in this international negotiations. And we shall look to the run up to that concretization of an arrangement, a workable plan, and its implementation in this particular section, Kyoto Protocol, the developments between 1992 to 2012.

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I. PUTTING COMMITMENTS TO ACTION



*** DEVELOPMENTS BETWEEN 1992-97:**

- BARGAINS AND TRADE-OFFS:- EMISSIONS, INTRINSICALLY LINKED TO ECONOMIC GROWTH- INDUSTRIALIZED NATIONS , ALWAYS ON THE LOOKOUT FOR A MAGICAL FORMULA THAT ENSURED "BUSINESS AS USUAL", WHILE SATISFYING THE CONVENTION REQUIREMENTS- DEVELOPING WORLD DESIRING TO HAVE A SHARE IN THE "CARBON PIE" & STILL REMAIN TO REAP BENEFITS OF THE CONVENTION- A VIRTUAL TUG OF WAR!

- EMISSION REDUCTIONS- QUANTIFICATION AND REDUCTION OF GHG TRANSLATED INTO "CARBON DIOXIDE EQUIVALENT" (CO₂e) -

WORKING OUT PERMUTATIONS AND COMBINATIONS OF REDUCTION TARGETS AND THEIR REVISION (- cases of erstwhile Soviet Union, European Union)- U.S (33%) AND ERSTWHILE SOVIET UNION (19%), ACCOUNTING FOR MORE THAN HALF OF THE REQUIRED REDUCTIONS



Having committed themselves to this obligation, the developed nations were under an obligation to reduce. But then how do I do reduce? You have not worked out the details of it. And so, they wanted to buy time, in all fairness with them, it probably said the details since they were not worked out. Let this conference of parties work out the modalities, till then we continue with our business as usual on.

And the developing countries on the other side, since they did not have any obligations to comply, or commit to, all the obligations were there on the developed ones, they wanted to get the best of the bargain. Let these guys come up with a package, a package whereby we will be able to access new technology, cleaner technology at no cost to us and also develop like them. And while these details are being worked out, we will continue with our motto of continuing to develop with whatever technology that is available with us, it was a virtual tug of war. Each one wants to take the best of the bargain in the entire array.

But it is not just a drama that was being played out. It was actually the question of quantification. If the reduction has to come to a pre-1990 position, how much, how much of the concentration of GHGs in actual weight, we have to reduce? Who should reduce how much? How does it pan out globally? is first question. And the first question was answered

this way. The emission reduction all the way referred to about half a dozen greenhouse gases, GHGs, we reduce it in two for our purpose of management, quantification and reduction of this, translating it in the form of carbon dioxide equivalent.

So everything was reduced to CO₂ equivalent, CO₂E carbon dioxide equivalent that was the first thing, then that work out, how much one is due to reduce. Look at the position. As far as United States is concerned, there was no problem, they have to reduce by 33 percent. Yes, as on 1992, the position was the contribution of United States to the concentration of GHGs was almost one third of the entire globe. And so that reduced by 33 percent. As far as US is concerned, we do not have problem with regard to that percentage.

But what about Soviet Union? That which was Soviet Union has now broken into 15 independent countries. The Soviet Union totally had 19 percent of the carbon pie to reduce. And so, the question was, how would we reduce? How much the Soviet Republic or the Soviet Union to Russia Republic would have, and had accounted for more than half of the required reductions. So, that needed to be worked out.

There is also the case of the European Union. The European Union is a conglomerate of several of these Western developed countries, which are always in the annex one group. And they would like to be treated as one block of the European economic entity. And together, we have to take this responsibility and amongst us we will provide as to how much one has to work it out, leave it to us, but allocate our share. So, this has to be internationally done. So, this was one question and that was being worked out.

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II. THE PROTOCOL



- ADOPTION OF FLEXIBLE MARKET MECHANISMS
- -FROM EMISSION REDUCTION -THAT WAS NON-NEGOTIABLE , TO THE ACROBATICS OF :
- (a) "CARBON COOPERATION"- TO UPSCALE TECHNOLOGY, MONITOR FACILITIES AND PARTNER OTHER ANNEX- B COUNTRIES (- ANNEX-A COUNTRIES AND ECONOMIES IN TRANSITION, UNDER THE OBLIGATION FOR REDUCTIONS) TO JOINTLY IMPLEMENT TO REACH THE ASSIGNED TARGETS(- II)
- (b) " CARBON TRADING"- MARKETING CARBON :"EMISSION TRADING" (- ET) AND
- (c) " BOOK ADJUSTMENTS" , ANNEX-I COUNTRIES, BY MAKING AVAILABLE RESOURCES AND TRANSFERING TECHNOLOGY- BUILDING AND STRENGTHENING CAPACITY IN THE DEVELOPING WORLD- CLEAN DEVELOPMENT MECHANISM (-CDM)



And ultimately, they decided that Soviet (Russian), Soviet Union, having been succeeded to by Russia, as it happened at the United Nations, in deciding on the permanent member of United Nations, from Soviet Union it became the Russian Republic as a permanent member of the United Nations. Same thing here also, that you can take the majority of that 19 percent pie of reduction. And we apply a particular formula for the European Union, which has been internally agreed within the regional entity as to how much each of the member shares would be, but each one would take a responsibility.

And unfortunately, some of these countries like Sweden and others, their emissions were so low, that they did not contribute to global warming at all. But being member of the European Union, they had to take up the responsibility along with those who were actually contributing to the greenhouse gases like Germany and France, and others. And so, the European Union had one particular share worked out, so the details took a little while.

Actually, it took five long years before a protocol, with all the details of who is responsible, how much, and within what time one has to really accomplish the mission that has been tasked for them to achieve. The Protocol, as it was inaugurated in Japan, in a place called Kyoto. It is called the Kyoto Protocol on climate change. And it adopted a very convenient model, convenient model, convenient for those developed countries because there was a lot of dispute and disagreements, as to which model we have to adopt.

When you talk of reduction, can we whole size reduce it? Can we think of different mechanisms whereby we will be able to achieve it? We need certain concessions; the

industrial lobby is not in favour of gross reduction all of a sudden. So, you need to work it out over a period of time by offering several options as to how we do it. And three options were worked out as to how this reduction of those carbon pie from the global emissions, the pre-1990 position would be arrived at.

And this was what was referred to as the market mechanism. Because the industry and the business houses understand only the market mechanisms of incentives, of concessions, of reward and certain holidays, tax holidays and things like that. So, some of these needed to be adopted here, and three certain modalities were worked out, they are called as the market mechanisms for emission reductions. So, from something which was a non-negotiable thing that you have to reduce so much, if you are United States, you have to reduce by 33 percent was supposed to be set that was fixed and committed too and accepted by United States.

Through this particular mechanism, they started coming up with certain mechanisms, which were actually diluting the very effect of it, but in practical terms this is the only way we have to move forward, otherwise there will not be an agreement, and entire international law is dependent on consensus of states and this was how the consensus was arrived at. The first one was something called as the joint implementation.

The annex 1 and annex B countries which form the annex1 countries, which had the obligation to reduce, they would get into a carbon cooperation. What is this carbon cooperation? That some of them are not having that advanced technology as their leaders and so, there has to be a lot of give and take, like for example, to give a simple example, if state A which has the technical capacity to reduce its carbon concentration to even beyond the quota that has been assigned to it.

So, if it has to reduce by 10 tonnes and if it can reduce by 12 tonnes, then what it would do? It would get into an arrangement with another member of this annex 1 group which is not that well advanced technologically, which also has say for example 10 tonnes to reduce of carbon concentration, but it can only manage 8 with the technology that is available with it, these 2 extra tonnes that it has to make up for the shortfall, it has to have cooperation with this technology transfer, up scaling of technology, monitoring facility to be provided one by those who are better off and through this cooperation together, they would be able to ensure that this 10 plus 10 of 20 tonnes of carbon reduction, they would be able to achieve together by

exchange, together by cooperation, together by the up scaling of technology of one, together with a monitoring by one who has that ability and partnership with the other one, this is the first formula.

The second formula was a very interesting one, which is referred to as emission trading. That means, between the two developed countries, one country has the technology and it is able to transfer the technology to the other one which does not have that technology and that transfer of cleaner technology by them to the other developed country would have to be quantified in terms of the carbon reduction. Say for example, a particular kind of clean technology when it is transferred by state A to state B, 1 tonne of carbon equivalent of that would be worked out for the transfer.

So, that means, I can transfer, I can trade emissions, and for trading emissions, I am going to get the technology. So thereby, a mechanism that was worked out among the developed nations, if I as state A will have to reduce by 10 tonnes and another state which has to reduce by equal quantity of 10 tonnes, then the shortfall of 1 or 2 tonnes would be supplied by me in the form of, I take additional load from him and to that extent between us, he spews 12 tonnes into the atmosphere, I spew only 8 tonnes, between us we have worked out the average, under the law of averages, 20 tonnes and that is what you require, both of us to accomplish.

So, having allowed the other one to surrender his extra tons of carbon, you have to give a credit to them, carbon credit, emission trading. So allowed to trade on emissions and thereby you will be able to work it up, it is a kind of a book adjustment. And another kind of book adjustment came in the third formula. It is called as transfer of clean development mechanism.

One of the obligations for the development nations was that they have to transfer the technology, the knowhow and provide financial assistance to the developing and underdeveloped nations and provide those additional capacity building exercises, so that they will also develop clean technology and so, through this clean technology they also develop, and for that they got into a bargain, okay, we will transfer this much of technology to you, and for that we need something in return.

And what is that, that to that extent, it should be quantified in terms of carbon reductions. So,

supposing I have to reduce my carbon emissions by 10 tonnes, as a developed nation I will transfer some of those modern technology to state C, D, E and F, which are developing nations or less developed nations. And cumulatively that would amount to, if you scientifically work it out half a tonne of carbon. So, that means, I continue to have 10 and half tonnes of carbon concentrated into the atmosphere by me.

But that half a ton extra would be made up through this transfer of clean technology to these nations. And thereby, I fulfil my requirements, 10 and a half minus half a ton. Half for the transfer of clean development mechanism, for giving financial assistance. So thereby, it is a kind of a trade-off, you sell your carbon coupon and thereby you get a credit and thereby, you continue with your business activity with the same contribution that you have made, but you are made up for that with the assistance that you are providing in terms of technology transfer, in terms of financial assistance, looks a little weird, looks most unconvincing way of getting into an arrangement, but this was how it was worked out.

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- IRONICALLY, GHGs, THE DETESTED VILLAIN, SOUGHT TO BE TO BE PHASED OUT, BECAME A TRADABLE COMMODITY, WITH THE ADOPTION OF THE KYOTO FORMULA !
- LAW OF AVERAGES APPLIED – AS THE ONLY PRACTICAL SOLUTION !
- COMMITMENT TO REDUCE TO 5% BELOW 1990 LEVEL, REMAINED
- CREATION OF CLIMATE ADAPTATION FUND:- PRIMARILY 2% OF CERTIFIED EMISSION REDUCTIONS (CERs) ISSUED FOR PROJECTS UNDER CDM, TO FINANCE CONCRETE ADAPTATION PROJECTS IN MOST VULNERBLE AND LESS DEVELOPED COUNTRIES
- COMMITMENT FOR IMPLEMENTATION 1997-2012 (-COMMITMENT PERIOD)- IF THERE WAS FAILURE IN MEETING THE EMISSION TARGETS, BY THOSE UNDER THE OBLIGATION, REQUIRED TO MAKE UP THE DIFFERENCE BETWEEN THE TARGETTED AND ACTUAL EMISSIONS, ALONG WITH A PENALTY AMOUNT OF 30%, IN THE SUBSEQUENT COMMITMENT PERIOD, STARTING FROM 2012- THESE WOULD ALSO BE PREVENTED FROM ENGAGING IN EMISSIONS TRADING UNTIL THEY WERE JUDGED TO BE IN COMPLIANCE WITH THE PROTOCOL



And ultimately, they decided that Soviet (Russian), Soviet Union, having been succeeded to by Russia, as it happened at the United Nations, in deciding on the permanent member of United Nations, from Soviet Union it became the Russian Republic as a permanent member of the United Nations. Same thing here also, that you can take the majority of that 19 percent pie of reduction. And we apply a particular formula for the European Union, which has been internally agreed within the regional entity as to how much each of the member shares would be, but each one would take a responsibility.

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- EMISSION TARGETS FOR SUBSEQUENT COMMITMENT PERIODS, FROM 2012, TO BE SET IN FUTURE PROTOCOLS

- THE PROTOCOL COULD COME INTO EFFECT, ONLY WHEN A MINIMUM OF 55 COUNTRIES, ACCOUNTING FOR 55% OF WORLD'S EMISSION IN 1990, RATIFIED IT- IN EFFECT, WITH OVER 50% OF THE EMISSIONS, U.S AND THE RUSSIAN FEDERATION (- AS SUCCESSOR OF OBLIGATIONS OF THE ERSTWHILE SOVIET UNION-), WITH THEIR NON- COOPERATION COULD PLAY SPOIL SPORT, BY NOT RATIFYING IT! - AS IT TURNED OUT, U.S DROPPED OUT IN 2001, CONTINUED TO BE NON-COOPERATIVE, FOR LONG AND CREATED ROADBLOCKS FOR IMPLEMENTATION !- TOWARDS THE END OF 2004, THE RUSSIAN FEDERATION RATIFIED IT, GIVING THE MUCH NEEDED BREATHER FOR THE PROTOCOL TO SEE THE LIGHT OF THE DAY! - FINALLY, A TOTAL OF 192 PARTIES RATIFIED (-191 STATES AND THE REGIONAL ENTITY, EU) IT.*



So, the formula that was worked out was such that, there was a lot of dilution in what had committed, but this was the only formula that was possible. And there was another hitch, the hitch was, if the protocol is to come into force, it should get the subscription, or the approval or what is referred to as the ratification of not less than 55 countries, so 55 countries should ratify them.

And in these 55 countries, you should have at least those many countries, which cumulatively

have contributed to at least 55 percent of global emissions of 1990. A very difficult task. That means what, over 50 percent of the emissions that are there with only two countries, like United States and the Russian Federation, 33 percent from United States and Russian Federation something around 19 percent. That means these two accounted for more than 50, if either of them play trade, then this will not come into effect at all.

Even if you put the entire globe, 192 countries coming together, it will not come into effect. As it so turned out, United States which appeared to be cooperative all the while when this Kyoto Protocol was, formula was being worked out, it started singing a different tune. It said that this is too much of a burden, we alone can take, cannot take this much of responsibility so we will drop out of it. And not only it remained non cooperative, it created roadblocks for the implementation of it.

And so, till around 2005, the Kyoto Protocol becoming a reality was a difficult task. But luckily, after a lot of negotiations, after a lot of give and take at the political level, the backroom, diplomatic ploys worked out, the Russian Federation ratified it in 2004 towards the end of that, giving the much-needed breather for the protocol to see the light of the day. Finally, a total 192 parties ratified it with more than 55 percent of carbon emissions satisfied and so the entire program could come into effect, even when United States did not cooperate.

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ACCEPTABLE TO ALL AND A VERY SHORT SPAN OF TIME, TO ACHIEVE ALL THIS - IN LITERAL TERMS, STARTING FROM 2008 UPTO 2012 - MADE THE TARGET, AN IMPOSSIBLE DREAM TO REALISE! - EXIT OF U.S AND WITH NO OBLIGATION ON CHINA FOR REDUCTIONS (- INSPITE OF EMERGING AS A BIGGEST EMITTER OF GHGs- BEING A DEVELOPING COUNTRY), THE MODEST TARGETS SET, EVEN WHEN REALISED, WOULD HAVE HARDLY MADE ANY QUALITATIVE CHANGE OF ANY CONSEQUENCE - GREATER IRONY : EVEN THE MODEST EMISSIONS TARGET WAS NOT ACHIEVED BY THE PARTIES!

• DURBAN (2011) & DOHA (2012)-CoPs: GENERAL CONSENSUS ON EXTENDING KYOTO COMMITMENTS UPTO 2020 AND EVOLVE A NEW AGREEMENT BY PARIS CoPs, IN 2015, TO TAKE THE PLACE OF KYOTO, FROM 2020- A THINK-TANK NAMED, DURBAN PLATFORM, CREATED TO WORK OUT THE MODALITIES OF A NEW AGREEMENT



But the problem was, it took so long, more than a decade for this particular formula to work. And remember, a formula to come into work needed 15 years of time from 1997 to 2012. And in order to work out the details, the CDM mechanism, for example, right from 2005 onwards, when they started working it out, it took a while. And so till the end of 2007, they were still working out the modalities of implementation of the Kyoto Protocol. So in effect, it was only from the beginning of 2008, after the end of 2012, this Kyoto Protocol would be in full operation in just five years' time.

And this made the target an impossible dream to realize. United States however did left, and China was developing at such a pace that even it was outstripping United States in carbon emissions. But China being a developing country, it had no obligations, it had only a right to get the clean development mechanism projects clear. Along with India, it got the maximum number of projects to implement with no obligations to reduce.

So even the modest targets with all the dilutions that occurred in the Kyoto Protocol became very difficult to realize and it did not make any qualitative or quantitative change at the end of the year 2012. The real greater irony was, even the modest emission targets were not achieved by the developed countries, forget about developing countries keeping pace with them, even those developed countries which were committed did not achieve whatever they had agreed to achieve.

So, the position around 2012 was very bleak, climate negotiations was at a breakpoint. So

much of work being done, but in terms of result very little to show to the world. But still, the Conference of parties were meeting one after another year after year. And luckily, in two such conference of parties, in both Durban in 2012 and in Doha in 2012, there was a general consensus that we should at least try our best to make things work. And we want to extend the Kyoto commitment up to 2020 and amend a new agreement by Paris conference of parties in 2015.

So when we come in another four years, we will come up with a new agreement to replace this Kyoto Protocol, till then let it work so that let it achieve some progress. And then we will tighten the screws of working out the Kyoto Protocol and come up with a far more rational, a far more transparent system to take the place of the Kyoto Protocol, and we will learn from our mistakes of the past and we will have a think tank called the Durban platform, which would work out the details of the modalities of a new agreement to come into existence in the year 2015.

And this new agreement will take the place of the Kyoto Protocol, and through that we will accomplish the mission, that was how it was decided. So the Kyoto Protocol, as you could see, there was a lot of heartier about it. There were so much of claims made, so much grand political grandstanding and even United States made a belated return. But it did not really assure anything. And having not assured anything, it did not come up with any clear commitment but it agreed to work with the others, cooperate with them to come up with a new deal to be brought into effect in Paris, in Paris, in the year 2015.

And that was how the arrangements ended in 2012. Kyoto had a very poor record to show in terms of achievements, but some progress made 10 steps taken forward 20 steps we moved backward, some of the developing countries started emitting more and so a new arrangement had to be worked out. There was no consensus, and it was at that surely, we moved to the next phase or the evolution of the climate negotiations, leading to the Paris agreement of 2015. That will be the discussion in the next session.